



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 19 2014

**MEMORANDUM**

**SUBJECT:** Working Effectively and Cooperatively

**FROM:** Gina McCarthy

**TO:** Arthur Elkins Jr., Inspector General

Peter Jutro, Acting Associate Administrator  
Office of Homeland Security

As Administrator, I am responsible for ensuring that the U.S. Environmental Protection Agency fully and effectively achieves its mission to protect our environment and the health of the American people. I do that by relying upon the tremendous talent and dedication of EPA leadership and staff. It is imperative that we function as a team. The Office of the Inspector General and the Office of Homeland Security must each perform its independent, yet complementary, role in a cooperative fashion.

To that end, I rely heavily on your capable leadership of your respective organizations. While we must regretfully acknowledge past difficulties that have arisen in connection with the performance of certain functions in each of your offices, relative to one another, we have made significant progress toward resolving these difficulties, and I am confident we can continue to make progress in eliminating sources of friction that only serve to impair the important work of the EPA. I expect that going forward you will manage your activities to avoid conflicts and to ensure each office is able to focus on its mission.

The OIG plays a unique and critical role in helping to ensure that we remain faithful to our mission and mandates. As I have stated many times, I greatly value the OIG's oversight to identify and to help me address instances of fraud, waste and abuse in the agency's programs. I will not tolerate, nor can the EPA afford, instances of wasteful spending or fraudulent or abusive misconduct at any level. At the same time, the OHS has a critical programmatic responsibility for matters involving national security. I rely on the OHS to ensure the agency appropriately and effectively uses relevant intelligence and provides the President and the National Security Council with information on which to base important decisions on developing and implementing national-security policies.

The work of your two offices must be performed in a manner that respects the roles of each and that places a premium on cooperation. Therefore, I request that you and your offices adhere to the attached procedures<sup>1</sup>, which are premised on the following key principles: prompt notification and sharing of information; the preservation of confidentiality and appropriate handling of classified information; and

<sup>1</sup> Certain agency documents, including Order 3220 and the Memorandum of Understanding between the OHS and the FBI, will be reassessed and possibly revised to reflect and support the attached procedures.

the speedy, respectful and decisive resolution of any perceived or actual conflicts to ensure that neither national-security matters nor OIG investigations are jeopardized or compromised.

While these procedures do not cover all areas we have identified as requiring improved cooperation, they provide a framework for the handling of intelligence information and national-security matters that will clarify roles in this critical area of EPA operations. Please continue to work with Deputy Chief of Staff Matthew Fritz on implementing these procedures as well as developing and implementing other approaches, such as the new Threat Coordination Group, to address the other needs for improved cooperation that we have identified.

Thank you for your continued commitment to a high-performing EPA.

## Attachment

Environmental Protection Agency (EPA) Procedures for the EPA Office of Homeland Security (OHS) and the EPA Office of Inspector General (OIG) with respect to the handling of matters related to National Security and Intelligence

### I. Purpose

These procedures are intended to facilitate the appropriate notification and handling of intelligence and related national security matters by, and between, OIG and OHS. It is further the intent of these procedures to eliminate or otherwise minimize any disruption to national security matters or to OIG investigations that potentially implicate national security matters.

Implementing these procedures should address concerns raised by OIG regarding its ability to take timely action to, as needed, address any existing or possible conflicts between national security matters and activities undertaken by OIG pursuant to its authority under the Inspector General Act. These procedures shall be periodically reviewed, and revised as necessary, to ensure that OHS and OIG, respectively, are able to properly carry out their programmatic and statutory duties.

Because the Federal Bureau of Investigation (FBI) is the primary intelligence and law enforcement agency within the United States, certain of these procedures also address interactions between EPA and the FBI in matters of national security.

### II. Scope and Definitions

These procedures are designed to meet the special needs of EPA with respect to national security matters and intelligence information, which implicate the core programmatic function of OHS. However, it is possible for the same information to be 1) intelligence, 2) law enforcement information and/or 3) information that indicates fraud, waste, or abuse at the Agency.<sup>1</sup>

"Intelligence" is defined by EO 12333 to include:

- i. Foreign Intelligence: Foreign intelligence means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.
- ii. Counterintelligence: Counterintelligence means information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against

<sup>1</sup> While national security matters take primacy, the latter two types of information may indicate a need for additional actions not in these procedures. For example, these procedures do not address information concerning potential fraud, waste, or abuse that does not also involve, or implicate, national security concerns, and for which OHS has no programmatic responsibility. Upon receipt of such information, OHS (as with all EPA Offices and employees) should report it to OIG.

espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.

"Law enforcement information" is information regarding criminal activity other than that carried out by a foreign government or international terrorist organization.

### **III. Notifications and Information Sharing**

OHS serves as the EPA's primary liaison to the intelligence community (IC) for matters of national security. In the course of carrying out its programmatic function, including being the primary liaison to the IC, OHS may receive or otherwise become aware of intelligence (as defined herein).

Upon receipt, or becoming aware, of such intelligence, OHS shall promptly, to the maximum extent allowable by law, provide said information to a contact within OIG designated by the Inspector General specifically for the purpose of receiving said intelligence. OHS may seek advice and counsel from the Office of General Counsel for the purpose of determining any applicable statutory or other limitations on the sharing or dissemination of said intelligence in the manner otherwise prescribed under these procedures.

For the purpose of avoiding, to the maximum extent possible, any conflicts between national security matters and matters within the jurisdiction of OIG, OHS shall establish a general process of promptly notifying OIG upon receipt of any intelligence received from the FBI or other member of the IC relating to national security investigations affecting EPA or Agency personnel. Such process shall ensure that OIG has sufficient information to determine the existence of any actual or potential conflicts with OIG matters. Notwithstanding the foregoing, in the event that OHS receives specific intelligence from the FBI or other member of the IC, and the sharing or dissemination of such intelligence is expressly limited under terms of use prescribed by said agency or entity, OHS shall promptly seek written permission to share that intelligence with OIG for the limited purpose of coordinating with OIG to minimize disruption, as described in these procedures. If such permission is denied, OHS shall seek permission to provide to the Inspector General appropriate contact information at FBI or other member of the IC for the purpose of possible OIG contact regarding the nature of the intelligence and restrictions.

In every instance, OIG shall protect information from unauthorized disclosure and will handle information in accordance with all applicable laws and policies. In addition, OIG should take all appropriate measures necessary to avoid acting in a manner that could reasonably be expected to compromise any ongoing national security investigation, including, but not limited to, coordinating its investigative activity with the FBI or other member of the IC leading such ongoing national security investigation.



#### **IV. Handling of Matters**

OHS, in carrying out its programmatic duties, principally relating to its serving as the primary liaison to the IC for matters of national security, may receive specific requests for information, or assistance in obtaining information, pertaining to EPA programs or employees. It is not expected that OHS will seek to unilaterally collect information from EPA employees absent a request for assistance from a law enforcement agency such as the FBI.

In any circumstance under which a law enforcement agency such as the FBI, or another member of the IC, seeks to lawfully interview an EPA employee concerning a matter involving national security, it is expected that a law enforcement officer from said agency or entity would perform the lead role in any such interview.<sup>2</sup> Furthermore, should the FBI, or other member of the IC, determine that an EPA employee should receive and be requested to sign a non-disclosure agreement of any kind, it is my expectation that such an agreement would comply with all legal requirements, including any applicable requirements to protect whistleblowers.

#### **V. Dispute Resolution**

In any instance where a member of OIG or OHS believes that the terms or procedures set forth herein have been violated, he or she shall promptly elevate any disagreement or dispute to management within his or her respective Office. Should management be unable to resolve the dispute, it shall be further elevated to the level of the Inspector General and the Associate Administrator for OHS, who shall promptly discuss the dispute for the purpose of seeking an appropriate accommodation or resolution. If, after such discussion, the Inspector General and the Associate Administrator are unable to resolve the dispute, one or both shall immediately report the facts surrounding the dispute to the Deputy Administrator or the Administrator.

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<sup>2</sup> Notwithstanding the position series of any specific OHS personnel, the authorities and directives presently administered by OHS do not authorize the exercise of law enforcement powers by personnel within OHS.